

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA, Case No. 16-CR-00019-J
Plaintiff, Cheyenne, Wyoming
June 24, 2016
vs. 9:40 a.m.
GILBERT WAYNE WILES, JR.,
Defendant.

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE ALAN B. JOHNSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: MR. THOMAS A. SZOTT
Assistant United States Attorney
UNITED STATES ATTORNEY'S OFFICE
P.O. Box 668
Cheyenne, WY 82003

For the Defendant: MR. DION J. CUSTIS
Attorney at Law
DION J. CUSTIS, P.C.
400 East 20th Street
Cheyenne, WY 82001

Court Reporter: MS. JULIE H. THOMAS, RMR, CRR
901 19th Street, Room A256
Denver, CO 80294
(303)296-3056 CA CSR No. 9162

Proceedings recorded by mechanical stenography;
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1 (Proceedings commenced 9:40 a.m.,
2 June 24, 2016.)

3 THE COURT: Thank you. Please be seated.

4 The matter we have this morning is the sentencing
5 proceedings in the case of United States of America,
6 plaintiff, against Gilbert Wayne Wiles Jr. This is under
7 Docket 16-CR-00019. Present is Assistant United States
8 Attorney Thomas Andrew Szott, and the defendant is present in
9 person with defense counsel Dion J. Custis.

10 A presentence investigation report was prepared by
11 Thomas P. Fitzgerald, United States Probation Officer, and
12 Mr. John Olive is here representing that office today.

13 Is the Government ready to proceed?

14 MR. SZOTT: Yes, Your Honor.

15 THE COURT: Mr. Custis?

16 MR. CUSTIS: We are, Your Honor.

17 MR. SZOTT: Good morning, Your Honor.

18 THE COURT: Good morning, Mr. Szott.

19 MR. SZOTT: This case began in this court with an
20 Indictment that was filed on January the 14th of this year.
21 It charged Mr. Wiles in two separate counts: Count 1,
22 conspiracy to operate an unregistered aircraft, and Count 2,
23 operating an unregistered aircraft and aiding and abetting.

24 On April 15th of this year Mr. Wiles pled guilty to
25 Count 2 and specifically to the aiding and abetting portion.

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1 So he pled guilty to aiding and abetting operation of an
2 unregistered aircraft, and that plea came under a binding plea
3 agreement which was also a conditional plea agreement. Under
4 Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure,
5 the parties seek to bind the Court to a sentence of anywhere
6 from one to three years of probation. Under Rule 11(a)(2) as
7 I mentioned, Your Honor, it's a conditional plea, so Mr. Wiles
8 is reserving his right to appeal various pretrial motions that
9 he had pending before the Court before the scheduled trial in
10 this case.

11 Two other material terms of the Plea Agreement I want
12 to mention, Your Honor. The Plea Agreement provides that at
13 the conclusion of the hearing, the United States will move to
14 dismiss Count 1 of the Indictment. The Plea Agreement also
15 contains a provision in which Mr. Wiles is consenting to the
16 forfeiture of the aircraft involved in this case, that being
17 the aircraft bearing tail number N6214V. And regarding the
18 forfeiture, I would also note that this Court entered a
19 preliminary forfeiture -- preliminary order of forfeiture on
20 May the 2nd. That's document number 86 in this court's
21 docket, which provides among other things that the order of
22 forfeiture will become final as to the defendant at the time
23 of sentencing. And under Rule 32.2(b)(4) again of the Rules
24 of Criminal Procedure, the Court should orally announce the
25 forfeiture as part of the sentence and then refer to the

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1 forfeiture order also in the judgment. So the Government
2 would make that request, Your Honor.

3 The Court referred to the presentence report which
4 was filed on May the 20th. The Government did not object to
5 the report, and in his original response through counsel,
6 Mr. Wiles didn't either. That response was filed on June 3rd.
7 Through counsel Mr. Wiles did file objections to the
8 presentence report on June 16th. Those objections fall into
9 several categories. He appears to be objecting to the
10 application of Section 2B1.1 of the sentencing guidelines and
11 referring to a previous motion that he had filed. The
12 previous motion actually contains a discussion that would
13 support the applicability of 2B1.1, Your Honor, and absent any
14 contention from the defendant today, the Government would urge
15 the Court to apply 2B1.1.

16 Mr. Wiles is also objecting to the two-level
17 sophisticated means enhancement under Section 2B1.1(b)(10)(C),
18 and as I understand it, his contention is that that
19 enhancement should not apply because he does not -- he claims
20 he does not own the aircraft.

21 He is also objecting to various factual assertions by
22 third parties and two special conditions of probation. He
23 objects to the condition that would require a mental health
24 evaluation and associated treatment if -- presumably, if
25 required. He also objects to the drug abuse evaluation

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1 condition and, again, presumably the associated treatment.

2 The guideline calculation in the presentence report
3 is as follows: It begins with a base offense level of 6. Two
4 levels are added for that sophisticated means enhancement.
5 Mr. Wiles then receives a two-level reduction for his
6 acceptance of responsibility which results in a total offense
7 level of 6, Criminal History Category I, and an advisory
8 guideline range of zero to six months.

9 Regarding the guideline calculation, Your Honor, even
10 if the Court were to not apply the sophisticated means, we
11 would still be in Criminal History Category I, zero to six
12 months. It's really just a question of whether it's total
13 offense level 6 or 4. The Government's position is that that
14 enhancement should apply, that based on the language of the
15 guidelines that Mr. Wiles's ownership of the aircraft really
16 isn't material. The question is whether he caused the conduct
17 constituting the sophisticated means, and here that would be
18 the use of a shell company or shell entity as the purported
19 owner of the aircraft.

20 Regarding that enhancement, Your Honor, I do have
21 Special Agent Joe O'Haver in the courtroom. He is available
22 to testify. However, again, because it won't affect the
23 guideline calculation and really shouldn't affect the sentence
24 in any way, I'm really hesitant to spend a lot of time putting
25 on evidence.

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1 I would also note, Your Honor, that under the Rules
2 of Criminal Procedure, the rules -- Rule 32 requires the
3 defendant to raise objections within 14 days of receiving the
4 PSR. I know in this District the Probation Office will
5 typically in an e-mail, if not always, indicate a response
6 deadline that's a little later than that 14 days.
7 Nevertheless, certainly it would not be as late as he in fact
8 objected. And, therefore, again under the Rules of Criminal
9 Procedure and Tenth Circuit case law, and here I'm citing to
10 the case of *United States versus Eastteam*, 426 F.3d 1301 at
11 1303, and what the Tenth Circuit said summarizing these
12 provisions is: "A defendant must raise objections to a PSR
13 within 14 days of receiving the PSR. See Fed.R.Crim.P.
14 32(f)(1). A district court may, however, entertain a new
15 objection at any time before sentencing if the defendant shows
16 good cause."

17 So if this Court were to find good cause to entertain
18 these untimely objections, I anticipate -- I'm prepared to
19 offer argument on the sophisticated means. I'm not inclined
20 to offer evidence, although the special agent is available.

21 Regarding the mental health evaluation, Your Honor,
22 I -- I haven't spoken to Mr. Fitzgerald about it. I don't
23 know that there is sufficient basis in the PSR to order a
24 mental health evaluation. I know there was a statement by
25 defendant's mother that seemed to be the primary basis for

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1 that, some other indicators as well. I'm not sure that that
2 one would hold up. There's ample indications in the PSR,
3 though, Your Honor, supporting the drug abuse evaluation
4 condition, and certainly the Government would support that
5 condition and would argue for its application.

6 So with apologies for the length of that
7 introduction, Your Honor, I believe we're ready to proceed.

8 THE COURT: Very well. Counsel.

9 MR. CUSTIS: Yes, Your Honor, Dion Custis for
10 Mr. Wiles, and we are ready to proceed.

11 THE COURT: Very well. Mr. Wiles, would you raise
12 your right hand and be sworn.

13 (The defendant was sworn.)

14 COURTROOM DEPUTY: Thank you.

15 THE COURT: Please state your full name.

16 THE DEFENDANT: Gilbert Wayne Wiles Jr.

17 THE COURT: Are you under the influence of any drug,
18 alcohol, pill, or medication today?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Have you received access to the
21 presentence investigation report?

22 THE DEFENDANT: I have.

23 THE COURT: And have you discussed the matter with
24 your attorney?

25 THE DEFENDANT: Yes.

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1 THE COURT: And are you satisfied with his work for
2 you so far?

3 THE DEFENDANT: Yes.

4 THE COURT: Very well. I have reviewed the
5 presentence investigation report in this case and find that it
6 is well and thoughtfully prepared and that the probation
7 officer went the additional step of verifying and checking all
8 of the information that was provided in it. I find that for
9 all of the reasons of treating defendants who are similarly
10 situated in a similar manner in this offense, and considering
11 the guideline used by analogy, that I will accept the Plea
12 Agreement in this matter under Federal Rule of Criminal
13 Procedure 11(c)(1)(C) and the sentence that will be imposed
14 will be imposed pursuant to that agreement that was entered
15 into in this matter and was filed with the Court.

16 With that said, I'd be pleased to hear anything that
17 counsel wishes to say.

18 MR. CUSTIS: Yes, Your Honor. Your Honor, in light
19 of that, the only thing that I would like to address is the
20 length of probation. I would urge the Court to consider a
21 two-year probation period. I think it's appropriate. And
22 probably the most convincing evidence that this Court has is
23 his conduct on pretrial supervision, which is for
24 approximately six months. Within that there's been absolutely
25 no problems whatsoever. He has gainful employment, a stable

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1 residence. He's been -- the Probation Office has been to his
2 home on more than one occasion. They have met with him on
3 more than one occasion. They have deemed his home, his work,
4 his friends and associates to be suitable. And really this is
5 a person that I don't really believe needs any supervision.

6 Understanding that he's pled to a federal offense and
7 that's required, I think a minimal probation period is
8 appropriate for him. I really don't see that we need to waste
9 any government resources on him. He really has given no cause
10 to do that. He's accepted responsibility for this offense,
11 and there really -- I don't believe there's really any other
12 outstanding issues surrounding it that have not been dealt
13 with at this point in time.

14 And what I'm referring to is specifically the portion
15 requiring drug testing and/or drug eval. I think certainly
16 Mr. Wiles would submit to a drug evaluation. We believe it
17 would come back as not recommending any type of treatment
18 because he's not a drug user and is not in need of any
19 treatment. So -- but I think just a blanket condition that he
20 submit to drug testing is really unnecessary. Again, I think
21 it's just a waste of resources at this point in time being
22 that he's been on pretrial supervision for six months, has
23 never had any indication in that time that there is any
24 concern there.

25 (The defendant and counsel consult.)

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1 MR. CUSTIS: And he tells me that they did do a drug
2 screening and obviously had no issues with it while he's been
3 on pretrial supervision.

4 So, Your Honor, that and the mental health
5 evaluation, again I don't think that that also is warranted.
6 There doesn't seem to be anything in here to indicate that
7 that's necessary. Again, I think that would be, again,
8 another waste of resources from the government.

9 So this is an individual that stands before you, Your
10 Honor, that I think is going to be very successful on
11 probation. I think he's shown that already. And I think that
12 the level of supervision is going to be very limited. Once
13 they actually do start the supervision, they're going to see
14 that this is a person that they really do not need to
15 supervise and spend a lot of time with.

16 So with that, Your Honor, we would request a two-year
17 probation period, and certainly Mr. Wiles will abide by any
18 condition the Court imposes.

19 THE COURT: Thank you.

20 Mr. Wiles, I'd be pleased to let you speak and
21 address the Court.

22 THE DEFENDANT: Your Honor, obviously I'm in a
23 position here that I never saw myself in. I take full
24 responsibility for my actions and apologize to the Court for
25 even wasting this time. I'm looking forward to moving forward

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1 in a positive direction. Thank you.

2 THE COURT: Well, that makes absolute good sense in
3 this matter, Mr. Wiles.

4 The Court fully adopts the terms and conditions of
5 the -- I'm sorry, I didn't say that correctly -- fully adopts
6 the findings of the probation officer in this matter. I
7 realize that there is some issue as to the calculation of the
8 guideline in this matter, but I don't think it is a
9 significant issue in the context of the Plea Agreement that
10 was entered into by and between the parties to this matter,
11 but I think needs to be addressed by the Court at any rate and
12 represents a thoughtful attempt by the probation officer to
13 address this case in the context of the guidelines by way of
14 providing assistance to the Court and a additional check
15 concerning the sentence that is being imposed in this matter
16 and its reasonableness for the purposes of sentencing under
17 federal law.

18 I recognize the arguments that have been made by
19 Mr. Custis certainly and his views about conserving
20 governmental resources, and ultimately I recognize that the
21 supervised release -- supervised probation that this Court
22 will be imposing will be under the, largely, the control of a
23 United States Probation Officer who will be dealing with
24 Mr. Wiles on a regular basis and making decisions concerning
25 his progress. He will know Mr. Wiles much better than we do

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1 in this courtroom by that contact face to face over a period
2 of time, and their evaluation of whether or not it's purely an
3 adversarial type of relationship, one that is opposed at every
4 step, or one that really represents a person who is attempting
5 to, at age 38, to establish a track record and a life for
6 himself with some stability and relationships that last will
7 be really their decision as opposed to mine. If it is one
8 that is filled with difficulty, then either a judge in
9 Colorado or wherever will be seeing the matter, or it may be
10 back here, and we'll have to deal with it. And we will.

11 I really, Mr. Wiles, feel more strongly that there
12 are aspects of your part in this and you as a person and your
13 style of life that gives me some more concern than even your
14 codefendant. And I recognize that you strongly contest the
15 opinions and put forth the favorable opinions, and there are a
16 number of them that were reported to Mr. Fitzgerald of more
17 recent acquaintances, but even concerns that family members
18 have had as well as the women in your life and the domestic
19 violence issues that have occurred and the assaults
20 that -- the assault issue at a dance and et cetera that are in
21 that record and really the -- until recently the lack of
22 genuine stability.

23 On the other hand, you are a person who presents with
24 good intelligence. Not everybody is able to secure a license
25 to operate aircraft and an instructor license in addition.

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1 That's not for dummies. It requires some additional skills
2 that most people do not have or possess.

3 I'm pleased that for the most recent history that you
4 have been maintaining steady employment, and it appears to be
5 lawful activities. And I am pleased in addition that a
6 probation officer will be making the decision as to what is
7 the nature of the testing that will be going on and whether or
8 not there is any need for treatment or an extensive drug
9 program, which may not be. And they hold the purse strings in
10 terms of what they do.

11 That's all I can offer in terms of my thoughts in
12 this matter. This case is still largely one that is
13 surrounded in mystery to its full extent, to the full purpose
14 and the full individuals who may be involved in what may be
15 going forward as we speak and any such activity. Particularly
16 concerning here was the use of false names, the amount of
17 money that was invested in this enterprise.

18 Mr. Wiles, you understand that a forfeiture action
19 has been commenced and a preliminary order of forfeiture has
20 been entered in this court with respect to aircraft possessing
21 tail number N6214 Victor. Do you oppose in any way the
22 forfeiture of that aircraft?

23 THE DEFENDANT: I don't understand how I can forfeit
24 something that doesn't belong to me, but, no, I do not oppose
25 it.

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1 THE COURT: Very well. Pursuant to the Sentencing
2 Reform Act of 1984, the factors enumerated in 18 United States
3 Code Section 3553(a), and in particular the Court is looking
4 at the rather odd nature of how this case came about --
5 looking behind it, there are certainly larger questions that
6 loom -- as well as the defendant's situation, it is the
7 judgment and sentence of the Court that the defendant, Gilbert
8 Wayne Wiles Jr., is hereby sentenced to a term of three years
9 of supervised probation with the recommendation that it not be
10 terminated early, leaving it really in the hands of those who
11 will know him best, that is, the probation officers wherever
12 he may be located.

13 Within 72 hours of sentencing, the defendant shall
14 report in person to the Probation Office in the District to
15 which he resides, which I think is the District of Colorado,
16 and while on supervised probation he shall abide by the
17 mandatory and standard conditions adopted by this Court.
18 Mandatory meaning by law, and standard are conditions adopted
19 by the U.S. Sentencing Commission and which are included in
20 the judgment and sentences of this Court.

21 In addition, due to the nature of the offense of
22 conviction, which included the possession of over a quarter of
23 a million dollars in U.S. currency possessed by both
24 defendants, the purchase of a \$130,000 aircraft by the
25 defendant who claims to have not made any money through

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1 legitimate employment, and law enforcement tracking multiple
2 unregistered flights from California to Oregon, Minnesota, and
3 Illinois by the aircraft after he purchased it, conditions are
4 recommended to monitor financial activity and manage financial
5 risks, including reporting income, new credit or debt, paying
6 taxes and filing tax returns, and advance approval regarding
7 employment issues.

8 Also, because the defendant has a documented history
9 of domestic violence, anger issues, and substance abuse,
10 special conditions are added to require participation in
11 mental health and drug treatment testing and abstinence from
12 mind-altering substances, including alcohol. A copay
13 condition is imposed to assist in fiscal management of the
14 drug testing program and to provide accountability for the
15 defendant.

16 Given the nature and extent of the defendant's
17 criminal history, a condition is imposed to address cognitive
18 thinking errors.

19 The nature of financial crimes, substance abuse, and
20 the need to address officer safety justifies a search
21 condition.

22 The following special conditions are thus imposed:

23 First, defendant shall not incur any new debt or
24 credit without permission of the probation officer.

25 Second, defendant shall provide full financial

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1 disclosure to the U.S. Probation Officer, including detailed
2 documentation of income and expenses.

3 Third, defendant shall cooperate with the Internal
4 Revenue Service and file tax returns timely and lawfully, pay
5 back taxes, penalties, and interest that may be determined by
6 the IRS.

7 Fourth, any employment shall be subject to prior
8 approval by the probation officer. I don't anticipate any
9 problem there. And he shall not discontinue employment
10 without prior approval of the U.S. Probation Officer or shall
11 report any loss of employment to the probation officer
12 promptly.

13 Fifth, defendant shall submit his person, residence,
14 storage facility, office, and vehicle to search conducted by
15 the probation officer at a reasonable time in a reasonable
16 manner based upon reasonable suspicion of contraband or
17 evidence of a violation of a condition. Failure to submit to
18 search may be grounds for revocation. Defendant should warn
19 others occupying the premises that it may be subject to search
20 by the Probation Office.

21 Sixth, defendant shall participate in a cognitive
22 behavioral treatment regimen ordered by the probation officer,
23 participate actively until successfully discharged or excused
24 by the probation officer.

25 Seventh, he shall complete a mental health evaluation

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1 and, if recommended, participate in and successfully complete
2 anger management, domestic violence treatment in a program
3 approved by the probation officer, abiding by the rules,
4 requirements, and conditions of that treatment program and not
5 discontinuing it without permission of the probation officer.
6 He shall participate in and successfully complete substance
7 abuse treatment in a program approved by the probation
8 officer, if necessary, and shall not discontinue it if ordered
9 without permission of the probation officer. He shall submit
10 to drug and alcohol testing as directed by the probation
11 officer, complying with copays imposed pursuant to any
12 District policy should he fail to comply.

13 Tenth, as a component of his treatment and testing,
14 there is a one-time fee of \$250 to partially defray the costs
15 of treatment and/or drug testing. Those payments shall be
16 made by cashier's check or money order to the Clerk of the
17 District Court here in Cheyenne. This condition is waived if
18 he is supervised by any District other than Wyoming.

19 Eleventh, defendant shall not engage in flight or
20 flying aircraft without permission of his supervising
21 probation officer during the term of this supervised
22 probation.

23 Twelfth, he shall refrain from any use or possession
24 of alcohol or other intoxicants, including over-the-counter
25 medications used contrary to recommended dosage or the

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1 intentional inhalation of any substance, prescribed or
2 otherwise, without permission of the probation officer and
3 shall not enter establishments whose primary income is derived
4 from the sale of alcohol.

5 Thirteenth, defendant shall satisfy his outstanding
6 and active warrants in Greenfield, Indiana, and Columbus,
7 Ohio, within the first six months of the probation term.

8 The Court finds the defendant does not have the
9 ability -- or does have the ability to pay a fine within the
10 guideline range, and a fine of \$1,000 is ordered, due
11 immediately inclusive of penalties and interest if applicable.

12 And, finally, it is ordered defendant shall pay a
13 special assessment fee in the amount of \$100, which shall be
14 due immediately.

15 Payments for monetary obligations shall be made
16 payable by cashier's check or money order to the Clerk of the
17 District Court here in Cheyenne. Defendant shall pay his
18 financial obligations immediately. Those not paid immediately
19 shall be paid commencing 30 days after imposition of probation
20 in monthly payments of not less than \$25 or 10 percent of the
21 defendant's gross monthly income, whichever is greater. All
22 monetary payments shall be satisfied not less than 60 days
23 prior to the expiration of the term of supervised probation.

24 Defendant is effectively barred from appealing the
25 length of sentence because he has received the sentence

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1 stipulated in the binding 11(c)(1)(C) Plea Agreement.

2 Count 1 is dismissed upon motion, if that motion is
3 made, of the United States.

4 MR. SZOTT: The United States would make that motion,
5 Your Honor.

6 THE COURT: The motion is granted, Mr. Szott.

7 Mr. Szott, do you want to remind me of anything that
8 we've neglected here?

9 MR. SZOTT: A couple of things, Your Honor, about
10 the -- about the advisement and conditions of supervision.
11 Again, I -- not the sentence itself. I would again note that
12 Mr. Wiles has reserved the right to appeal those pretrial
13 motions as a condition of his -- he has a conditional Plea
14 Agreement, so that right of appeal is certainly available.

15 And then, Your Honor, with respect to the substance
16 abuse treatment condition, I just wanted to clarify so that we
17 don't have any issue with delegation of authority to the
18 probation officer. I didn't look at this recently, but my
19 understanding is it's proper for the Court to order treatment
20 or order an evaluation and compliance with any recommended
21 treatment, but not to give the probation officer discretion to
22 order the treatment. I believe Mr. Olive probably would know
23 this area of the law as well or better than I do, but -- so
24 the Government would request that the substance abuse
25 treatment condition either -- either the Court require that

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1 treatment, or what might be the safer approach would be to
2 require an evaluation and then compliance with any treatment
3 that's ordered as a result of that evaluation.

4 THE COURT: I think the language we used was "shall
5 participate in and successfully complete substance abuse
6 treatment in a program approved by the U.S. Probation
7 Officer."

8 PROBATION OFFICER OLIVE: Correct, and, Your Honor,
9 that would not violate the directives from the Tenth Circuit
10 and other appellate courts because the defendant is required
11 by the Court to participate in a program. The program simply
12 has to be approved by the probation officer.

13 MR. SZOTT: I believe that's correct, Your Honor.

14 THE COURT: Well, we do need to remind the defendant
15 he has 14 days from the date that the judgment and sentence is
16 entered in this matter within which to perfect and file his
17 notice of appeal. And your attorney is very much aware of
18 that 14-day period, so you should discuss it with him.

19 There appears to be nothing further before the Court
20 this morning, and we will stand in recess.

21 MR. CUSTIS: Thank you, Your Honor.

22 (Proceedings concluded 10:12 a.m.,
23 June 24, 2016.)
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C E R T I F I C A T E

I, JULIE H. THOMAS, Official Court Reporter for the
United States District Court for the District of Wyoming, a
Registered Merit Reporter and Certified Realtime Reporter, do
hereby certify that I reported by machine shorthand the
proceedings contained herein on the aforementioned subject on
the date herein set forth, and that the foregoing pages
constitute a full, true and correct transcript.

Dated this 29th day of September, 2016.

/s/ Julie H. Thomas

JULIE H. THOMAS
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter
CA CSR No. 9162